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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,724	10/03/2001	Marc Owerfeldt	SUNMP025	1256

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EXAMINER

SWEARINGEN, JEFFREY R

ART UNIT	PAPER NUMBER
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2145

DATE MAILED: 09/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/970,724

Applicant(s)

OWERFELDT ET AL.

Examiner

Jeffrey R. Swearingen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Response to Arguments***

1. The rejection under 35 U.S.C. 101 is maintained. Applicant claimed the stack and module are "to be executed by a computer system". The stack and module are not yet executed by the computer system, and are therefore intangible. The fact that something is "to be executed by a computer system" does not mean that it is executed by the computer system and does not make it tangible. Applicant's amendment is intended use of the invention. Applicant claimed two software modules that were not tangibly embodied in an apparatus or tangible storage medium.
2. Applicant's amendments to claims 1, 8, and 13, while overcoming the previous rejections under 35 U.S.C. 112 for enablement and new matter, have raised new rejections under 35 U.S.C. 112, first paragraph for introduction of new matter. Applicant newly claimed a "new connector module" that is "configured to be generated" by the system. No support existed in the originally filed specification for the generation of a new connector module. Please note that Applicant's original specification, page 14, did reference a "new RTP connector" in lines 5-10. This "new RTP connector" was not generated by the system, but the suggestion was given to allow one of ordinary skill in the art to personally develop through software coding in Java new RTP connectors to cover new types of transport in the future. This is not equivalent to the configuration and generation of a new RTP connector as amended.
3. Further addressing Applicant's traversal of the Office's interpretations on page 9 of the remarks, one of ordinary skill in the art would not have been aware of the "types of transport layers" as referenced in Applicant's specification. Applicant never specifically stated that the transport layers were limited to IP and ATM or defined based upon transport layer 4 of the OSI model, and no suggestion was given in the specification for this type of interpretation. Applicant referenced "transport-independent tasks", but never correlated those with IP or ATM. Applicant further stated that the RTP stack could be "easily adapted to any type of transport layer, such as ATM or IP transport layers" (page 10, lines 11-13 of original spec, as cited in remarks, p. 10), but this adaptation is done through a person making changes to the software code. The invention does not automatically adapt for different types of transport layers as currently claimed.

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4. The amendments have overcome the rejection under 35 U.S.C. 112, second paragraph.
5. Applicant argued RFC 1889 and Beckert were not combinable. Applicant is pointed to MPEP 2145, section III. If the references were not physically combinable (which the Office disagrees with), "[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference.... Rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art." *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). "Combining the teachings of references does not involve an ability to combine their specific structures." *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973).
6. Applicant argued the RFC reference failed to disclose the connector module, citing a definition present in the RFC. Applicant failed to give a clear definition in the originally filed specification for a "connector module" as used in the present invention. The broadest reasonable interpretation is applied per MPEP 2111.01 failing Applicant's submission of any applicable definition to the term "connector module".
7. All of Applicant's arguments involve the nebulous "connector module", which Applicant at no point defined in the specification. One of ordinary skill in the art was forced to apply the Office's interpretation to understand a connector module based upon this failure on Applicant's part.
8. Applicant's arguments all involve the new matter previously discussed in this action.

Claim Rejections - 35 USC § 101

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
10. Claims 1-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-7 are directed toward a transport protocol stack, which contains no hardware and is materially made of software. Claims 8-12 are directed toward a connector module which is a software object and contains no hardware. Claims 13-20 are directed toward a protocol stack, which

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is software and not hardware. Claims 1-20 are software, *per se*. Claims 1-20 have no tangible embodiments, and are therefore non-statutory.

Claim Rejections - 35 USC § 112

11. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

12. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 1, 8 and 13 are newly amended to claim a "new RTP connector" that is "configured to be generated". It is impossible to "configure to generate" a module that is not generated yet.

13. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. No support existed in the originally filed specification for an RTP connector module generated by the system. No support existed in the originally filed specification for a "new RTP connector". No support existed in the original specification for the configuration of a new RTP connector.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over RFC 1889 in view of Beckert et al. (U.S. Patent No. 6,175,789).

16. In regard to claim 1, RFC 1889 disclosed a transport-independent real-time transport protocol (RTP) stack (RFC 1889 section 1) comprising a transport-independent tasks module, wherein the transport-independent tasks module is configured to perform tasks that are independent of an underlying transport layer type (section 1), and a connector module in communication with the transport-independent module, wherein the connector module included methods that are dependent on the underlying transport layer wherein a new connector module is configured to be generated so as to adapt the RTP stack to a second underlying transport layer having a different transport layer type, and further wherein the transport-independent tasks module was configured to communicate with the new connector module in the same manner as the connector module. (section 10 and the translator of section 2)

17. In regard to claims 2 and 3, RFC 1889 disclosed the connector module included data input and output methods which were utilized by the transport-independent tasks module to communicate with the first underlying transport layer. (section 3, definitions of port, transport address, RTP session, Synchronization source, and contributing source; section 10).

18. In regard to claims 4 and 5, RFC 1889 disclosed the data input and output methods included an RTP input or output stream method that returned an RTP input or output stream to a calling method, respectively. (section 7.1, definitions of transport and mixer)

19. In regard to claims 6 and 7, RFC 1889 taught the data input and output methods included an RTCP input or output stream to a calling method. (section 6.2, paragraphs 1-4)

20. In regard to claim 8, RFC 1889 taught an RTP output stream method that returned an RTP output stream to a calling method (section 7.1, definitions of translator and mixer); an RTP input stream method that returned an RTP input stream to a calling method (section 7.1, definitions of translator and mixer); a RTCP output stream method that returned a RTCP output stream to a calling method (section 6.2, paragraphs 1-4); and a RTCP input stream method that returned a RTCP input stream to a calling

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method (section 6.2, paragraphs 1-4), wherein a new RTP connector module is configured to be generated for each underlying transport layer having a different transport layer type so as to adapt an RTP stack to the corresponding underlying transport layer. (section 2, translator).

21. In regard to claims 9-10, RFC 1889 taught the RTP connector module generated transport-independent input/output streams and provided access to a particular type of underlying transport layer. (section 3, definitions of port, transport address, RTP session, Synchronization source, and contributing source; section 10).

22. In regard to claims 11-12, RFC 1889 taught the RTP connector module was in communication with a transport-independent tasks module, wherein the transport-independent tasks module included methods that were independent of the underlying transport layer and processed the transport-independent input/output streams using transport-independent operations (section 3, definitions of port, transport address, RTP session, Synchronization source, and contributing source; section 10).

23. In regard to claim 13, RFC 1889 disclosed a transport-independent tasks module, wherein the transport-independent tasks module included methods that are independent of an underlying transport layer having a first transport layer type (section 1), and a connector module having an RTP output stream method in communication with the RTP transmitter module, and an RTP input stream method in communication with the RTP receiver module, wherein the RTP output stream method and the RTP input stream provide access to the first underlying transport layer wherein a new connector module is configured to be generated so as to adapt the RTP stack to a second underlying transport layer having a different transport layer type. (section 10 and the translator of section 2)

24. In regard to claims 14 and 18, RFC 1889 disclosed the RTP output stream method returned a RTP input stream to the RTP receiver module (section 7.1, definitions of translator and mixer).

25. In regard to claims 15 and 19, RFC 1889 taught the RTP input stream method returned an RTP input stream to the RTP receiver module (section 7.1).

26. In regard to claims 16-17, RFC 1889 taught a RTCP transmitter module and a RTCP receiver module which were independent of the first underlying transport layer. (section 1, section 6.2).

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27. In regard to claim 20, RFC 1889 taught a new connector module operated utilizing the second underlying transport without modifying the transport-independent tasks module (section 1, section 3, section 6.2, section 7.1, section 10).

28. It is well known in the art of software design when constructing an application to create modules, which are a portion of the program that perform a particular function, and it would have been obvious to one of ordinary skill in the art to create modules such as taught in Beckert to provide for easy interfacing with RFC 1889.

Conclusion

29. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

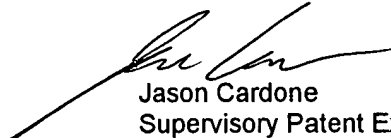
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571) 272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jason Cardone
Supervisory Patent Examiner
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